



PATENT

**DECLARATION AND POWER OF ATTORNEY FOR  
UNITED STATES LETTERS PATENT APPLICATION**

As a below-named inventors, I, Davis Foulger, William Babcock, John Esposito, Robert E. McElhaney and William Minckler hereby declare that:

My residence, post-office address and citizenship are as stated below next to my name.

I believe I am an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled: METHOD OF BACKTRACING NETWORK PERFORMANCE, the specification which is attached hereto and identified as Attorney Docket No. EMPIR-024AUS and Empirix Case No. 023-US.

I hereby state that I have reviewed and understand the contents of the above-identified application specification, including the claims, as amended by any amendment specifically referred to herein.

I acknowledge the duty to disclose all information known to me that is material to patentability in accordance with Title 37, Code of Federal Regulations, §1.56.

I hereby claim foreign priority benefits under Title 35, United States Code §119(a)-(d) of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

**EARLIEST FOREIGN APPLICATION(S), IF ANY FILED WITHIN 12 MONTHS  
(6 MONTHS FOR DESIGN) PRIOR TO THIS U.S. APPLICATION**

Country	Application Number	Date of Filing (month, day, year)	Priority Claimed Under 35 USC 119
			<u>  </u> Yes <u>  </u> No <u>  </u>
			<u>  </u> Yes <u>  </u> No <u>  </u>

**RECEIVED**

MAY 16 2003

**OFFICE OF PETITIONS**

Patent  
Application No.: 09/911,216  
Attorney Case No. EMPIR-024AUS  
Empirix Case No. 023-US

**ALL FOREIGN APPLICATION(S), IF ANY FILED MORE THAN 12 MONTHS (6 MONTHS  
FOR DESIGN) PRIOR TO THIS U.S. APPLICATION**


I hereby claim priority benefits under Title 35, United States Code §119(e), of any United States provisional patent application(s) listed below:

Application Number	Date of Filing (month, day, year)	Priority Claimed Under 35 USC 119(e)
60/220,918	July 26, 2000	<u>X</u> Yes    No _
		_ Yes    No _
		_ Yes    No _

I hereby claim the benefit under Title 35, United States Code §120, of the United States Application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United State Code, §112, I acknowledge the duty to disclose all information that is material to patentability in accordance with Title 37, Code of Federal Regulations, §1.56, and which became available to me between the filing date of the prior application and the national or PCT international filing date of this application:

Application Number	Date of Filing (month,day,year)	Status (Patented/Pending/Abandoned)

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or

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imprisonment or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I hereby appoint:

Christopher S. Daly	Reg. No. 37,303
Judith C. Crowley	Reg. No. 35,091
Donald F. Mofford	Reg. No. 33,740
Paul D. Durkee	Reg. No. 41,003
Richard M. Sharkansky	Reg. No. 25,800
David W. Rouille	Reg. No. 40,150
Kermit Robinson	Reg. No. 48,734
Robert V. Klauzinski	Reg. No. 42,742
Cathy L. Peterson	Reg. No. 41,249

all of Daly, Crowley & Mofford, LLP, 275 Turnpike Street, Suite 101, Canton MA 02021-2310, jointly, and each of them severally, my attorneys at law, with full power of substitution, delegation and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent and Trademark Office connected therewith.

Please direct all telephone calls and address all correspondence to:

David W. Rouille  
Daly, Crowley & Mofford, LLP  
275 Turnpike Street - Suite 101  
Canton, MA 02021  
Telephone No. (781) 401-9988 x23  
Facsimile: (781) 401-9966

Patent  
Application No.: 09/911,216  
Attorney Case No. EMPIR-024AUS  
Empirix Case No. 023-US

Full name of first or sole Inventor <b>Davis Foulger</b>	
Inventor's Signature	Date
Residence <b>54 Lake Oniad Drive, Wappingers Fall, NY 12590</b>	
Country of Citizenship <b>United States</b>	

Full name of second joint Inventor <b>William Minckler</b>	
Inventor's Signature	Date
Residence <b>104-3 Chestnut Street, Waltham, MA 02453</b>	
Country of Citizenship <b>United States</b>	

Full name of third joint Inventor <b>Robert E. McElhaney</b>	
Inventor's Signature	Date
Residence <b>48 East Pasture Road, Berwick, ME 03901</b>	
Country of Citizenship <b>United States</b>	

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Full name of fourth joint Inventor John Esposito	
Inventor's Signature	Date
Residence 2 Woodridge Road, Marlborough, MA 01752	
Country of Citizenship United States	

Full name of fourth joint Inventor William Babcock	
Inventor's Signature	Date
Residence 5 Kashmin's Way, Lakeville, MA 02347	
Country of Citizenship United States	

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I hereby represent that I am authorized to sign the present oath on behalf of Empirix, Inc.

Respectfully submitted,

Dated: \_\_\_\_\_

\_\_\_\_\_  
**David W. Rouille**  
Reg. No 40,150  
Attorney for Applicant

Daly, Crowley & Mofford LLP  
275 Turnpike Street, Suite 101  
Canton MA 02021-2310  
Telephone: (781) 401-9988 ext 25  
Facsimile: (781) 401-9966

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## EMPIRIX CORPORATION EMPLOYMENT AGREEMENT

In consideration of my employment by Empirix Corporation, a corporation of the State of Delaware (hereinafter referred to as "the Company"), and the payments made to me as consequence thereof, I agree that I will promptly report to an officer of the Company or to such other individual as may from time to time be designated, all inventions and new ideas which I have conceived since the time of entering the employment of the Company in respect to any subject matter relating to the business in which the Company is engaging as of the date of conception of each such invention or new idea. This obligation ceases with termination of my employment with the Company.

I further agree to assign to the Company the entire interest throughout the world in all inventions and new ideas referred to in the preceding paragraph and to execute all papers and do anything necessary and reasonable to secure to the Company title therein and Letters Patent pertaining thereto including the giving of testimony in any suit if called so to do during or after my employment but all at the expense of the Company.

I further agree that I will make a written record of all inventions and new ideas falling within the scope of this agreement in the form of notes, sketches, drawings, or reports relating thereto, which records shall be and remain the property of and available to the Company at all times.

I further agree that I will not during or after the period of my employment with the Company, divulge to any unauthorized persons confidential information concerning the Company's business, technology and activities that I learn during the period of my employment.

I further agree that I will observe all rules and regulations laid down by the Government agencies relating to the safeguarding of classified

information which may be disclosed or entrusted to me in connection with any contract between the Company and the Government or any contractor with the Government.

I further agree that I will not during the period of my employment by the Company, directly or indirectly enter the employment of, or render any professional services, except such as are rendered at the request of the Company, to any individual, partnership, association or corporation who or which is a competitor of the Company, without the prior permission in writing of the Company. I further agree that I will notify the Company of any outside employment in which I am engaged during the period of my employment with the Company.

I further agree that I will not during the period of my employment by the Company, or for the 12 months following the termination of my employment, directly or indirectly solicit, encourage or take any other action which is intended to induce any employee of the Company to terminate his or her employment with the Company.

I understand that this agreement will remain in effect so long as I remain employed by the Company, notwithstanding any change in my title, responsibility, duties or compensation. I further understand that I may be asked in the future to enter a more comprehensive set of employment agreements in conjunction with a promotion, change of responsibility or otherwise.

This agreement supersedes all previous agreements between me and the Company relating to the subject matter hereof, and may not be modified on behalf of the Company in whole or in part except by statement in writing signed by the President thereof or an officer designated by him.

Accepted By: Davis Foulger

Signature: [Signature]

Witness: [Signature]

Signed this: 8th day of September 2000

**TERADYNE**

TERADYNE INC.  
321 HARRISON AVENUE  
BOSTON, MASSACHUSETTS 02116-2238  
TELEPHONE 617-482-2700

## EMPLOYMENT AGREEMENT

In consideration of my employment by Teradyne, Inc., a Massachusetts corporation, or any subsidiary of Teradyne, Inc. (hereinafter my employer is referred to as "the Company"), and the payments made to me as consequence thereof, I agree that I will promptly report to an officer of the Company or to such other individual as may from time to time be designated, all inventions and new ideas which I have conceived since the time of entering the employment of the Company in respect to any subject matter relating to the business in which the Company is engaging as of the date of conception of each such invention or new idea. This obligation ceases with termination of my employment with the Company.

I further agree to assign to the Company the entire interest throughout the world in all inventions and new ideas referred to in the preceding paragraph and to execute all papers and do anything necessary and reasonable to secure to the Company title therein and Letters Patent pertaining thereto including the giving of testimony in any suit if called so to do during or after my employment but all at the expense of the Company.

All inventions and new ideas that would fall within the scope of this agreement, but for the fact that they were conceived prior to my employment by the Company, may be excluded from this agreement only if I can establish, under applicable inventorship law, a date of conception prior to my entering the employment of the Company.

I further agree that I will make a written record of all inventions and new ideas falling within the scope of this agreement in the form of notes, sketches, drawings, or reports relating thereto, which records

shall be and remain the property of and available to the Company at all times.

I further agree that I will not, during or after the period of my employment with the Company, divulge to any unauthorized persons confidential information concerning the Company's business, technology, and activities that I learn during the period of my employment.

I further agree that I will observe all rules and regulations laid down by the Government agencies relating to the safeguarding of classified information which may be disclosed or entrusted to me in connection with any contract between the Company and the Government or any contract with the Government.

I further agree that I will not, during the period of my employment by the Company, directly or indirectly enter the employment of, or render any professional services, except such as are rendered at the request of the Company, to any individual, partnership, association or corporation who or which is a competitor of the Company without the prior permission in writing of the Company. I further agree that I will notify the Company of any outside employment in which I am engaged during the period of my employment with the Company.

This agreement supersedes all previous agreements between me and the Company relating to the subject matter hereof, and may not be modified on behalf of the Company in whole or in part except by a statement in writing signed by the President thereof or an officer designated by him.

Signed at Watertown, MA. this 12<sup>th</sup> day of June 1996  
 Witness: C. Schmiedly Signature: William L. Babcock Jr.  
 Accepted on behalf of the Company by: Hiram Scott

# TERADYNE

## EMPLOYMENT AGREEMENT

In consideration of my employment by Teradyne, Inc., a corporation of the Commonwealth of Massachusetts (hereinafter referred to as "the Company"), and the payments made to me as consequence thereof, I agree that I will promptly report to an officer of the Company or to such other individual as may from time to time be designated, all inventions and new ideas which I have conceived since the time of entering the employment of the Company in respect to any subject matter relating to the business in which the Company is engaging as of the date of conception of each such invention or new idea. This obligation ceases with termination of my employment with the Company.

I further agree to assign to the Company the entire interest throughout the world in all inventions and new ideas referred to in the preceding paragraph and to execute all papers and do anything necessary and reasonable to secure to the Company title therein and Letters Patent pertaining thereto including the giving of testimony in any suit if called so to do during or after my employment but all at the expense of the Company.

I further agree that I will make a written record of all inventions and new ideas falling within the scope of this agreement in the form of notes, sketches, drawings, or reports relating thereto, which records shall be and remain the property of and available to the Company at all times.

I further agree that I will not during or after the period of my employment with the Company, divulge to any unauthorized persons confidential information

concerning the Company's business, technology and activities that I learn during the period of my employment.

I further agree that I will observe all rules and regulations laid down by the Government agencies relating to the safeguarding of classified information which may be disclosed or entrusted to me in connection with any contract between the Company and the Government or any contractor with the Government.

I further agree that I will not during the period of my employment by the Company, directly or indirectly enter the employment of, or render any professional services, except such as are rendered at the request of the Company, to any individual, partnership, association or corporation who or which is a competitor of the Company, without the prior permission in writing of the Company. I further agree that I will notify the Company of any outside employment in which I am engaged during the period of my employment with the Company.

This agreement supersedes all previous agreements between me and the Company relating to the subject matter hereof, and may not be modified on behalf of the Company in whole or in part except by a statement in writing signed by the President thereof or an officer designated by him.

Signed at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Witness: Jennifer Bublitz Signature: John Esposito

Accepted: TERADYNE, INC. By: James Sexton

**TERADYNE****EMPLOYMENT AGREEMENT**

In consideration of my employment by Teradyne, Inc., a corporation of the Commonwealth of Massachusetts (hereinafter referred to as "the Company"), and the payments made to me as consequence thereof, I agree that I will promptly report to an officer of the Company or to such other individual as may from time to time be designated, all inventions and new ideas which I have conceived since the time of entering the employment of the Company in respect to any subject matter relating to the business in which the Company is engaging as of the date of conception of each such invention or new idea. This obligation ceases with termination of my employment with the Company.

I further agree to assign to the Company the entire interest throughout the world in all inventions and new ideas referred to in the preceding paragraph and to execute all papers and do anything necessary and reasonable to secure to the Company title thereto and Letters Patent pertaining thereto including the giving of testimony in any suit if called so to do during or after my employment but all at the expense of the Company.

I further agree that I will make a written record of all inventions and new ideas falling within the scope of this agreement in the form of notes, sketches, drawings, or reports relating thereto, which records shall be and remain the property of and available to the Company at all times.

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This agreement supersedes all previous agreements between me and the Company relating to the subject matter hereof, and may not be modified on behalf of the Company in whole or in part except by a statement in writing signed by the President thereof or an officer designated by him.

Witness: William J. Babcock, this 8th day of July, 1997

Witness: Jennifer J. Babcock, Signature: Peter E. McElroy, Jr.

Accepted: TERADYNE, INC. By: Peter D. Schmitz, Dru. Mgr.



TERADYNE, INC.  
TELECOMMUNICATIONS DIVISION  
1405 LAKE COOK ROAD  
DEERFIELD, ILLINOIS 60015-5296  
TELEPHONE 847 940-9000

### Agreement for Persons Providing Contractual Services

In consideration of my assignment to Teradyne, Inc., a corporation of the Commonwealth of Massachusetts (hereinafter referred to as "the Company"), and the payments made to me as consequence thereof, I agree that I will promptly report to the Company all inventions which I have conceived during my assignment to the Company in respect to any subject matter relating to the business in which the Company is engaging as of date of conception of each such invention. This obligation ceases with termination of my assignment to the Company.

I further agree to assign to the Company the entire interest throughout the world all inventions and new ideas referred to in the preceding paragraph and to execute all papers and do anything necessary and reasonable to secure to the Company title therein and Letters Patent pertaining thereto including the giving of testimony in any suit if called so to do during or after my assignment but all at the expense of the Company.

All inventions that would fall within the scope of this agreement, but for the fact that they were conceived prior to my assignment to the Company, may be excluded from this agreement only if I can establish, under applicable inventorship law, a date of conception prior to my entering the employment of the Company.

I further agree that I will make a written record of all inventions falling within the scope of this agreement in the form of notes, sketches, drawings, and reports relating thereto, which records shall be and remain the property of and available to the Company at all times.

I agree that I will not, during or after the period of my assignment to Teradyne, divulge to any unauthorized persons confidential information concerning the Company's business, technology, and activities that I learn during the period of my assignment.

Signed at 8900 this 24 day of April, 2000

Witness: Jay Openman  
Please Print

Signature: Jay Openman

Accepted: 4/24/00  
Date

By: Robert E. M'Elhage,

# TERADYNE

## EMPLOYMENT AGREEMENT

In consideration of my employment by Teradyne, Inc., a corporation of the Commonwealth of Massachusetts (hereinafter referred to as "the Company"), and the payments made to me as consequence thereof, I agree that I will promptly report to an officer of the Company or to such other individual as may from time to time be designated, all inventions and new ideas which I have conceived since the time of entering the employment of the Company in respect to any subject matter relating to the business in which the Company is engaging as of the date of conception of each such invention or new idea. This obligation ceases with termination of my employment with the Company.

I further agree to assign to the Company the entire interest throughout the world in all inventions and new ideas referred to in the preceding paragraph and to execute all papers and do anything necessary and reasonable to secure to the Company title therein and Letters Patent pertaining thereto including the giving of testimony in any suit if called so to do during or after my employment but all at the expense of the Company.

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concerning the Company's business, technology and activities that I learn during the period of my employment.

I further agree that I will observe all rules and regulations laid down by the Government agencies relating to the safeguarding of classified information which may be disclosed or entrusted to me in connection with any contract between the Company and the Government or any contractor with the Government.

I further agree that I will not during the period of my employment by the Company, directly or indirectly enter the employment of, or render any professional services, except such as are rendered at the request of the Company, to any individual, partnership, association or corporation who or which is a competitor of the Company, without the prior permission in writing of the Company. I further agree that I will notify the Company of any outside employment in which I am engaged during the period of my employment with the Company.

This agreement supersedes all previous agreements between me and the Company relating to the subject matter hereof, and may not be modified on behalf of the Company in whole or in part except by a statement in writing signed by the President thereof or an officer designated by him.

Signed at Waltham MA this 19th day of January 1999

Witness: John Schmitz Signature: William Murdoch

Accepted: TERADYNE, INC. By: William Deatt

## PATENT AND TRADEMARK CASES - RULES OF PRACTICE

**§ 1.47 FILING WHEN AN INVENTOR REFUSES TO SIGN OR CANNOT BE REACHED.**

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in § 1.17(i)(h), and the last known address of the nonsigning inventor. ~~The Patent and Trademark Office shall, except in a continued prosecution application under § 1.53(d), forward notice of the filing of the application to the nonsigning inventor at said address and publish notice of the filing of the application in the OFFICIAL GAZETTE.~~ The nonsigning inventor may subsequently join in the application ~~on~~ by filing an oath or declaration complying with § 1.63.

(b) Whenever all of the inventors refuse to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for all the inventors. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in § 1.17(i)(h), and the last known address of all of the inventors. ~~The Office shall, except in a continued prosecution application under § 1.53(d), forward notice of the filing of the application to all of the inventors at the addresses stated in the application and publish notice of the filing of the application in the OFFICIAL GAZETTE.~~ An inventor may subsequently join in the application ~~on~~ by filing an oath or declaration complying with § 1.63.

(c) The Office will send notice of the filing of the application to all inventors who have not joined in the application at the address(es) provided in the petition under this section, and publish notice of the filing of the application in the *OFFICIAL GAZETTE*. The Office may dispense with this notice provision in a continuation or divisional application, if notice regarding the filing of the prior application was given to the nonsigning inventor(s).